

DBE FACT SHEET

EPA'S DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

The United States Environmental Protection Agency (EPA) adopted a DBE rule (40 CFR Part 33), which went into effect on May 27, 2008. The requirements of the old minority- and women-owned business enterprises (MBE/WBE) program were revised and additional contract administration requirements were added. This revised program was renamed the DBE program.

The DBE program applies to all Clean Water Fund Program (CWFP) and Safe Drinking Water Loan Program (SDWLP) projects. However, different types of municipalities and projects must meet different sets of DBE requirements. Municipalities must meet additional requirements when they have projects designated by DNR as "federal equivalency". The department designates specific projects as federal equivalency and notifies the selected municipalities of this designation prior to bid solicitation.

What is DBE?

DBE, MBE, and WBE are defined in the DBE rule as business entities, at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 {42 U.S.C. 4370d}. Public Law 102-389 established a national DBE utilization goal of 8%.

DBEs include more businesses than just minority-owned and women-owned business enterprises. Other businesses such as a Small Business Enterprise (SBE), a Small Business Enterprise in a Rural Area (SBRA), a Labor Surplus Area Firm (LSAF) or a Historically Underutilized Business (HUB) Zone Small Business may qualify as a DBE if they meet the ownership and control requirements of the federal law.

Why a new rule?

The DBE rule provides increased opportunities for disadvantaged businesses to compete for contracts and subcontracts during the procurement of construction work, equipment, supplies, and professional services. The objectives of this rule are listed in 40 CFR 33.101 as:

- To ensure non-discrimination in the award of contracts under EPA financial assistance agreements.
- To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in *Adarand Contractors, Inc. v. Peña*, 515 U.S. 200 (1995).
- To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements.
- To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.



The DBE rule acknowledges that government has a vested interest in remedying contracting discrimination against businesses owned and controlled by socially and economically disadvantaged individuals.

What changes and additional requirements are included in the DBE rule?

1. Bidders List: Municipalities (federal equivalency loan recipients) are required to maintain a bidders list for the duration of project construction. Specific information regarding what must be maintained is included in 40 CFR 33.501.
2. Certification of MBE/WBE: Self-certification of MBE/WBE is no longer accepted by the EPA. Agencies designated to certify MBEs/WBEs, include but are not limited to the following:
 - a. The Small Business Administration (SBA);
 - b. The Unified Certification Program of the US Department of Transportation, which includes similar programs run by individual states;
 - c. Private entities designated by EPA;
 - d. EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU); and
 - e. Indian Tribes as long as they meet EPA's certification requirements.
 - f. The procedures for certifying a DBE are explained under 40 CFR 33.205 through 40 CFR 33.212. A legitimate DBE under 49 CFR 26.67 must have a net worth which does not exceed \$750,000.
 - g. Agencies certifying DBEs are expected to issue a proof of certification; a certification letter will suffice. A municipality and/or a prime contractor may also verify through a database search if a DBE is certified. Most of the agencies designated to certify DBEs maintain online databases. Each municipality is responsible for requiring that proof of DBE certification be submitted with the bidding documentation.
3. Contract administration requirements:
 - a. Payment of subcontractors: Within 30 days from the date the prime contractor is paid by the municipality, the prime contractor must pay its subcontractors for work adequately performed.
 - b. DBE Termination: A prime contractor must notify a municipality (in writing) before terminating a DBE subcontractor for failure to complete work under a subcontract for whatever reason.
 - c. Replacing a subcontractor: A prime contractor must implement the Six Good Faith Efforts when replacing a DBE subcontractor, even if the prime contractor has achieved the fair share objectives.
4. Fair Share Objectives for MBE/WBE: A "fair share objective" is defined under 40 CFR 33.403, and the steps for establishing the fair share objectives are provided in 40 CFR 33.405. The Wisconsin Department of Natural Resources (WDNR) negotiates agency-wide fair share objectives (or goals) with EPA for MBE/WBE use. A fair share objective is a "goal", not a "quota". These fair share objectives are re-evaluated by EPA every three years.



5. Reporting Actual MBE/WBE Utilization: Only certified MBE/WBE use counts towards the agency-wide fair share objectives. The WDNR reports the actual utilization data to EPA semi-annually; for some EPA-funded projects, the reporting is done annually. Municipalities are still required to provide the WDNR with the actual MBE/WBE utilization data at project closeout.
6. Implementing Good Faith Efforts: The six affirmative steps and/or six positive efforts of the old MBE/WBE Program have been consolidated and renamed the Six Good Faith Efforts. The detailed efforts listed under 40 CFR 33.301 are intended to improve contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals/entities.

What are the enforcement provisions for non-compliance with the DBE requirements?

If a municipality does not comply with requirements, the Department will exercise its authority provided under 40 CFR 33.105, including sanctions.

Where can one obtain information about the DBE rule?

More information about the DBE Rule/Program is posted on the following web pages:

US EPA Small Business Programs DBE Page - <http://www.epa.gov/resources-small-businesses/disadvantaged-business-enterprise-resources-and-training>

WDNR Environmental Loans DBE Page - <http://dnr.wi.gov/Aid/documents/EIF/Guide/DBE.html>

